

Remarks/Arguments

Status of the Claims

Claims 1-3 and 7-9 are pending in the application. The Disposition of the Claims provided in the current Office Action Summary page indicates that Claims 1- 3 and 7 are deemed to recite allowable subject matter. Claims 8 and 9 are rejected.

Applicants gratefully acknowledge the Examiner's finding that Claims 1-3 and 7 recite allowable subject matter.

Considered as a set, the claims under examination are drawn to nucleic acid sequences encoding human vanilloid receptor-like (VRL) receptor (more commonly known as TRPV2), an expression vector comprising a nucleic acid which encodes a VRL, host cells comprising the vectors disclosed and claimed in the instant application and a method of producing VRL receptor polypeptide.

Claims

Claim 8 has been amended in accordance with the Examiner's suggestion. By virtue of its dependency on claim 8, the scope of claim 9 has also been amended. No new matter has been added as a consequence of this amendment.

A current Claim Listing begins on page 2 of this submission. The allowable claims (claims 1, 2, 3 and 7) are described as in the listing as "previously presented" claims, in order to conform with the approved list of status identifiers.

Rejection of Claims 8 and 9 Under 35 U.S.C. § 101 Should be Withdrawn

Claims 8 and 9 are rejected under 35 U.S.C. § 101 to the extent that the scope of the invention recited in the rejected claims could be construed to encompass non-statutory subject matter.

The Examiner notes that "[t]he specification states that the invention relates to host cells and organisms transformed with expression vectors containing vr-1" (Office action pages 2 thru 3). The Examiner reasons that the cell recited in the claim 8 "could be present, or intended to be present in a human being, said cell becoming integrated into the human being and therefore being an inseparable part of the human itself" (Office Action, page 3). Based on this reasoning the Examiner concludes that the scope of the claim "encompasses a human being, which is non-statutory subject matter" (*Id.*).

The Examiner indicates that recitation of the limitation "non-human" or "isolated host cell" would be remedial. Applicants have elected to adopt the Examiner's suggestion and have amended Claim 8 to recite "An isolated host cell." Because claim 8 is the base claim for the method recited in claim 9, the amended language also changes the scope of claim 9. As amended, claim 9 recites the use of the host cell of claim 8 (i.e. an isolated host cell), to produce the VRL polypeptide of the invention.

Based on the amendment made to claim 8, the scope of the inventions recited in claims 8 and 9 is now limited to statutory subject matter. Accordingly, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections of Claims 8 and 9 under 35 U.S.C. § 101, and the timely issuance of a Notice of Allowance.

Respectfully submitted,

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